Supreme Court, U.S.
FILED
SEP 8 1999
OFFICE OF THE CLERK

No. 99-99

IN THE

Supreme Court of the United States

STATE LINE HOTEL, INC.,

Petitioner,

v.

CHRIS BUDDENSICK,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UTAH COURT OF APPEALS

RESPONDENT'S BRIEF IN OPPOSITION

MICHAEL A. KATZ
Counsel of Record
MICHAEL F. RICHMAN & ASSOCIATES
Attorneys for Respondent
5684 South Green Street
Salt Lake City, Utah 84123
(801) 266-0999

154959

Counsel Press LLC
FORMERLY LUTZ APPELLATE SERVICES
(800) 274-3321 · (800) 359-6859

TABLE OF CONTENTS

	Page
Table of Cited Authorities	ii
Statement of the Case	1
A. Statement of Facts	1
Summary of Argument	3
Reasons for Denying the Writ	4
I. The Utah Court Of Appeals Decision In *Buddensick v. State Line Hotel* Is In Harmony With Opinions Of This Court.	4
II. The Buddensick Opinion Does Not Decide An Important Federal Question Which Has Not But Should Be Decided By This Court.	9
Conclusion	12

TABLE OF CITED AUTHORITIES

Page

Cases:

Asahi Metal Industry v. Superior Court, 480 U.S. 102, 107 S. Ct. 1026, 94 L. Ed. 2d 92 (1987) ... 8

Burger King Corp. v. Rudzewicz, 471 U.S. 462, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985) 5, 8

Calder v. Jones, 465 U.S. 783, 104 S. Ct. 1482, 79 L. Ed. 2d 804 (1984) 10

Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 104 S. Ct. 1868, 80 L. Ed. 2d 404 (1983) 4, 8, 9, 12

Perkins v. Benquet Consolidated Mining Co., 342 U.S. 437, 72 S. Ct. 413, 96 L. Ed. 485 (1952) 4, 5, 6, 8, 9, 12

Rainbow Travel Service v. Hilton Hotels Corp., 896 App. 1233 (10th Cir. 1990) 11

Southmark Corp. v. Life Investors, 851 F.2d 763 (5th Cir. 1988) 5

Williams v. Lakeview Co., 1999 WL 440398 (Arizona Court App. 1999) 10, 11

Wilson v. Humphrey's (Cayman) Ltd., 916 F.2d 1239 (7th Cir. 1990) 11

Worldwide Volkswagen Corp. v. Woodson, 444 U.S. 291, 100 S. Ct. 559, 62 L. Ed. 490 (1979) 8, 11

Cited Authorities

Page

United States Constitution:

Fourteenth Amendment 4

Rule:

United States Supreme Court Rule 10 12

Other Authority:

NEV. GAMING COMM. REG. 15.490.1(b)-1 6

STATEMENT OF THE CASE

A. Statement of Facts

While Respondent does not necessarily dispute the Statement of Facts offered by State Line Hotel, Chris Buddensick offers the following additional facts material to consideration of questions presented by the Petition for Certiorari.

1. Petitioner, the State Line Hotel, Inc., is a Nevada corporation which owns and operates the State Line Hotel in Wendover, Nevada. (Record at 11-12, 248, *Buddensick v. State Line Hotel, Inc.*, 972 P.2d at 928, 929 (Utah App. 1998)).

2. Wendover, Nevada, (State Line's principal place of business) is located on the Utah-Nevada border. It conducts extensive advertising and promotional activities in Utah, including maintenance of a toll-free telephone number. These advertising activities specifically target citizens of the State of Utah who comprise a significant source of its business. (*Buddensick*, 972 P.2d at 929 and 931.)

3. In addition to its advertising and promotional activities within the State of Utah, Petitioner contracts for goods and services (including legal work) within the Forum. (*Buddensick*, 972 P.2d at 929.)

4. Among the Utah entities with which Petitioner contracts is State Line Properties, Ltd., a Utah limited partnership which takes reservations from Utah residents for hotel rooms, golf packages, gaming tournaments, shows and entertainment. State Line Hotel, the Nevada corporation, is

the sole shareholder in State Line Properties, Inc., which is the general partner of State Line Properties, Ltd. Further, all but one of Petitioner's largest shareholders are Utah residents. (Record at 249.)

5. State Line Hotel, Inc., the Nevada corporation, State Line Properties, Ltd., the Utah limited partnership; and State Line Properties, Inc., the Utah corporation, are all named insureds under the same insurance policy. That policy was issued by St. Paul Fire Marine Insurance through Aird Insurance Agency, another Utah entity with whom Petitioner does business. (Record at 165 and 249.)

6. State Line Hotel, Inc. leases six parcels of real property in Utah, five of them from either State Line Properties, the Utah corporation or Utah limited partnership. Two of the parcels are used for purposes directly related to operation of the State Line Hotel and Casino (a parking lot and signage). The City of Wendover, Utah, leases a storage unit at its airport to Petitioner. These leases extend between five and twenty years and are several extensions of prior leases. (Record at 106 and 165 and 249.)

7. State Line Hotel, the Nevada corporation, is a party to other actions presently pending in the State of Utah. (Record at 162.)

8. On July 29, 1996, Respondent, Chris Buddensick, sustained severe personal injuries, when proceeding through a buffet line at its restaurant, she slipped on a substance on the floor and fell. (*Buddensick*, 972 P.2d at 928.)

SUMMARY OF ARGUMENT

I.

Petitioner has engaged in continuous and systematic general business contacts within the State of Utah sufficient for its courts to exercise general jurisdiction over this party. Advertising activities directed at Utah residents; contracting with Utah residents for goods and services; and, the leasing of real property within the State which is directly related to its hotel and casino operations are more significant and pervasive than those found adequate in United States Supreme Court controlling authority. State Line Hotel's Petition for Writ of Certiorari should be rejected.

II.

This Court has enunciated a cogent and time-tested set of criteria and standards upon which lower courts may decide general jurisdiction issues. To the extent there is any doubt or need for the United States Supreme Court to further limit or expand a State's right to exercise jurisdiction over a non-resident, the facts here are not so compelling to warrant consideration. The quantity and quality of State Line Hotel's business contacts within the State of Utah are overwhelming and do not present circumstances justifying Supreme Court review.

REASONS FOR DENYING THE WRIT

I.

THE UTAH COURT OF APPEALS DECISION IN *BUDDENSICK v. STATE LINE HOTEL* IS IN HARMONY WITH OPINIONS OF THIS COURT.

State Line's Petition for Certiorari contends the Utah Court of Appeals violated the Due Process Clause of the Fourteenth Amendment of the United States Constitution by finding the Utah courts had general jurisdiction over the subject Nevada corporation. More specifically, Petitioner contends the *Buddensick v. State Line* ruling was in conflict with controlling United States Supreme Court authority, citing: *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 104 S. Ct. 1868, 80 L. Ed. 2d 404 (1983); and *Perkins v. Benquet Consolidated Mining Co.*, 342 U.S. 437, 72 S. Ct. 413, 96 L. Ed. 485 (1952). In so arguing, it is as if State Line ignores the significant and compelling facts and circumstances surrounding its close ties with the forum state. State Line's contacts with Utah far exceed those upon which this Court upheld a finding of general jurisdiction in the *Perkins* case. This should result in rejection of the Petition for Certiorari.[1]

When a party's cause of action does not arise directly out of or relate to a foreign corporation's activities in the forum state, to satisfy Due Process, it must be shown there are sufficient minimum contacts between the forum and the foreign

1. Neither Petitioner's Brief nor the Utah Court of Appeals decision addresses arguments made by Ms. Buddensick that the Utah Courts also had specific jurisdiction over the Nevada corporation. Ms. Buddensick's Court of Appeals Brief raises this issue, asserting her slip-and-fall cause of action rose directly from State Line's activities in Utah, more particularly its extensive advertising and promotional campaigns.

corporation. As expressed by this Court in *Perkins*, the question is whether State Line's business activities in Utah were "continuous and systematic". (*Perkins*, 342 U.S. at 438, 445.)[2]

In assessing whether State Line's business activities within the forum state are sufficiently continuous and systematic, it is important to here note the physical presence of the Petitioner. *See, generally, Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985). As outlined by the Utah Court of Appeals in its opinion, State Line possesses no less than five parcels of real property in Utah, two of which are directly adjacent to State Line's hotel and casino and are integral if not necessary for its gambling operations. Its physical presence in the forum state is also reflected by two post office boxes in Utah, a cellular phone line, regular phone line and six Utah fax numbers. *Buddensick*, 972 P.2d 929.

Equally important is the close incestuous business relationships between the State Line, the Nevada corporation, and its Utah "cousins", State Line Properties, Ltd. and State Line Properties, Inc. Petitioner acknowledges a commonality of shareholders, officers and/or directors. These entities appear on the same letterhead and stationery and in one instance a post office box. While the presence of subsidiary corporations in the forum state is not by itself sufficient to warrant the exercise of general jurisdiction, it is indicative of a continuous and systematic business presence of the non-resident. *See, generally, Southmark Corp. v. Life Investors*, 851 F.2d 763 (5th Cir. 1988) and cases cited at 774.[3]

---

2. The Utah Courts apply an almost identical standard, asking whether State Line's contacts with the forum were "substantial and continuous". *Buddensick*, 972 P.2d 930.

3. Without challenging State Line's motives for incorporating in Nevada to operate its hotel and casino, such is arguably a result

(Cont'd)

Even Petitioner's Articles of Incorporation filed with the State of Nevada in 1961 bear evidence of its long standing ties and business dealings with Utah entities. The Articles were notarized and signed in Wendover, Utah. Amendments to the Articles were filed at the request of and presumably prepared by the Utah law firm of Van Cott, Bagley, Cornwall and McCarthy headquartered in Salt Lake City. Notably, many of the real property leases referenced above were also prepared by this Utah law office, which reflects just one Utah entity from whom the Nevada corporation obtains professional services and good and supplies. Additional examples are: linen supply services; business equipment leases and/or repairs; and, the use of a Utah insurance agency for procurement of the policy which covers the slip-and-fall accident giving rise to Ms. Buddensick's complaint. (Record at 107.)

To say State Line's level of significant business activities within the forum state not meet or exceed those of the foreign corporation in *Perkins* (found sufficient by this Court to support an exercise of general jurisdiction) is disingenuous. In *Perkins*, the foreign Defendant maintained an office in Ohio and carried on correspondence, banking and securities activities from the forum state. But not only does State Line engage in similar activities, this Nevada corporation went further by the leasing of several properties in Utah, which is also the domicile of several related entities and many of its shareholders, directors and officers. Petitioner's advertising and promotional activities specifically directed at Utah residents should also not go unnoticed by this Court as it

---

(Cont'd)
of Nevada's gaming laws and regulations. NEV. GAMING COMM. REG. 15.490.1(b)-1 announces Nevada policy not to ordinarily grant a gaming license to a non-resident corporation.

shows continuous and systematic business activities by the foreign corporation.

The Utah Court of Appeals made a reasoned, thorough assessment of State Line's business contacts within the State of Utah and determined they were systematic and continuous such as to satisfy constitutional Due Process concerns. At page 930 of its opinion, the Court surveyed federal and state case law and distilled twelve relevant factors in determining whether a corporate defendant should be subjected to the forum state's jurisdiction. Of those "relevant factors", State Line: engages in business in Utah; owns, leases or controls property or assets in the State; maintains employees, offices, agents or bank accounts in the State; has shareholders which reside in Utah; maintains phone and fax listings; advertises and solicits business in the State; and, generates a substantial portion of its sales or revenue from Utah customers.

These activities not only support a finding of continuous and systematic business dealings in the forum, they also make it fair and reasonable for Petitioner to be hailed before its courts.

> The concept of minimum contacts, in turn, can be seen to perform two related, but distinguishable functions. It protects the defendant against the burdens of litigating in a distant or inconvenient forum . . . The protection against inconvenient litigation is typically described in terms of "reasonableness" or "fairness". We have said that the Defendant's contacts with the forum state must be such that maintenance of the suit "does not offend traditional motions of fair play and substantial justice". (Citations omitted). The

> relationship between the defendant and the forum must be such that it is "reasonable . . . to require the corporation to defend the particular suit which is brought there". (Citation omitted).

Worldwide Volkswagen Corp. v. Woodson, 444 U.S. 291-292, 100 S. Ct. 559, 62 L. Ed. 490 (1979). Given the level of contacts with Utah, including utilization of a Salt Lake City law firm as counsel, State Line should not be heard to allege any inconvenience from litigating within the forum state. Wendover, Nevada, where the casino is located, is but a two hour drive from Salt Lake City where the case is pending. Eye-witnesses and Ms. Buddensick's treating physicians are all residents of the State of Utah and should their depositions be required, it is a far more convenient forum than Elko County, where Wendover, Nevada is situated. And, the hotel and casino's location on the border of Utah in Nevada makes it reasonably foreseeable it will be hailed before the Utah courts and be required to defend a suit there. *Burger King*, 471 U.S. 462, 476.[4] Indeed, Petitioner in its responses to discovery acknowledged being a defendant in a number of Utah court proceedings.

---

4. It is here worth noting that both *Perkins* and *Helicopteros* involved truly "foreign" corporations, that is, non-U.S. companies. Geographical proximity is not necessarily a factor expressly utilized by the Courts in resolving a general jurisdiction case or in assessing Due Process concerns. However, this Court has, on at least one occasion, commented that Due Process concerns are heightened when international defendants are involved. In *Asahi Metal Industry v. Superior Court*, 480 U.S. 102, 114, 107 S. Ct. 1026, 94 L. Ed. 2d 92 (1987), the Court noted "additional burdens" placed upon one who must defend itself in a foreign legal systems. Those burdens are not present and do not raise Due Process issues when, as here, the Defendant maintains its principal place of business on the forum's border.

Balancing the absence of inconvenience to State Line to defend Ms. Buddensick's claim in Utah with her interest in obtaining convenient and effective relief and Utah's interest in adjudicating this dispute on behalf of its citizen, it is clear the Utah Court of Appeals did not offend traditional notions of due process in its ruling. By evaluating the substantive merits of the Petition, this Court should find ample grounds to uphold the Utah Court of Appeals decision in *Buddensick v. State Line Hotel, Inc.* It need not proceed with the more thorny question of whether there are reasons to rethink the Court's prior rulings on general jurisdiction in the context of the present case.

II.

THE BUDDENSICK OPINION DOES NOT DECIDE AN IMPORTANT FEDERAL QUESTION WHICH HAS NOT BUT SHOULD BE DECIDED BY THIS COURT.

Point II of State Line's Petition asks the Court to revisit and indeed alter the "continuous and systematic" criteria which has governed evaluation of general jurisdiction cases for the forty-seven years since issuing the *Perkins*' opinion. In so doing, State Line does not challenge the fundamental reasonableness or vitality of the "continuous and systemic" standard but instead asks the Court to "provide guidelines as to the types of activities which would meet this constitutional requirement." (Petitioner's Brief at page 14.) It further claims such guidelines are necessary because State Line's activities within the forum state fall somewhere between those present in *Perkins* and *Helicopterios*. But this premise is flawed as discussed above. Here, State Line's business dealings in Utah actually exceed those found sufficient in *Perkins* to support an exercise of general

jurisdiction. The Utah Court of Appeals correctly found in its opinion that State Line met numerous "relevant factors" applied by Courts from other jurisdictions. The "inconsistent results" Petitioner and the quoted commentators rely on to support review of this case, simply are not present in the face of the overwhelming evidence Chris Buddensick produced.

State Line contends the recent Arizona case of *Williams v. Lakeview Co.*, 1999 WL 440398 (Arizona Court App. 1999) illustrates the "conflict and confusion regarding the scope of general jurisdiction". In truth, it offers no basis for granting the Petition. Had the Arizona Appellate Court been faced with all the compelling facts uncovered by Ms. Buddensick during discovery here, it would have reached the same result as the Utah Court.[5]

Defendant's sole contacts with the forum state in *Williams* were its advertising in Arizona newspapers and solicitation of its residents to the Lakeview casino, who did comprise a substantial number of its customers. The Court specifically noted that Lakeview's owners/partners were all Nevada residents and that it owned no real or personal property in Arizona, significant contacts present with respect to State Line and Utah. It is not mere conjecture to state that the Arizona Court of Appeals would have found general jurisdiction appropriate had such key elements been present.

---

5. In the end, the Arizona Court in *Williams* did reach the same result, albeit on the basis of specific jurisdiction rather than general jurisdiction. It ultimately found "Plaintiff's injuries can fairly be said to arise out of or result from allegedly tortious activities that *Lakeview* intentionally directed towards the forum." *Williams*, 1999 West Law 440390-440400, citing *Calder v. Jones*, 465 U.S. 783, 789-90, 104 S. Ct. 1482, 79 L. Ed. 2d 804 (1984).

Not only was the Court of Appeals decision in *Buddensick* consistent with the *Williams* case (relied upon by State Line), it comports with recent United States Court of Appeals' decision. For instance, in *Wilson v. Humphrey's (Cayman) Ltd.*, 916 F.2d 1239 (7th Cir. 1990), the Appellate Court found constitutional Due Process concerns were not offended when the district court exercised personal jurisdiction over a foreign corporation in a suit involving a personal injury/assault which occurred while Plaintiff was staying as a guest at a Cayman Islands' hotel. Defendants only contacts there were a contract with a local/forum tour operator, ads in magazines distributed in the state and occasionally sending corporate officers or agents to Indiana. The Appellate Court remanded for further proceedings the question of whether general jurisdiction was appropriate but nonetheless found the exercise of specific jurisdiction warranted notwithstanding defendant's the due process arguments. Importantly, this Court refused to review the Seventh Circuit opinion and denied the Petition for Certiorari.

Another recent Court of Appeals ruling rejecting a due process defense to the exercise of personal jurisdiction is *Rainbow Travel Service v. Hilton Hotels Corp.*, 896 App. 1233 (10th Cir. 1990). Similar to the *Wilson* case and our facts, plaintiffs relied upon defendant's solicitation of business within the forum to support is jurisdictional claims. While the Court noted that a physical presence of the Defendant would be helpful in such circumstances, it nonetheless found an exercise of specific jurisdiction appropriate. The Court expressly rejected Defendant's claims that its contacts within the forum state were "random or fortuitous" when it intentionally sought out and conducted business with residents of the forum. *See Worldwide Volkswagen*, 444 U.S. 286.

Rule 10 of the Rules of the United States Supreme Court provides "a Petition for a Writ of Certiorari will be granted only for *compelling reasons*." (Emphasis added.) The overwhelming evidence offered by Ms. Buddensick of State Line's "continuous and systematic" business contacts within the forum state actually give compelling reasons to reject the Petition. Appellate court after appellate court have upheld the exercise of specific or general jurisdiction with far fewer contacts than are here present. Uniformly, the guidelines set forth by the Supreme Court in *Perkins* and *Heliocopteros* have allowed lower courts to fairly and reasonably articulate their grounds for either permitting or declining an exercise of general jurisdiction. Even if the Supreme Court was inclined to change its standards or offer further guidelines as to what is or is not sufficient, this is not the appropriate case to do so.

CONCLUSION

Based on the foregoing, Respondent Chris Buddensick respectfully urges the Court to deny State Line Hotel's request for a Writ of Certiorari.

Respectfully submitted,

MICHAEL A. KATZ
Counsel of Record
MICHAEL F. RICHMAN & ASSOCIATES
Attorneys for Respondent
5684 South Green Street
Salt Lake City, Utah 84123
(801) 266-0999